IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.4108 of 2005

Date of Decision: 29.8.2006

Harpreet Kaur .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR
HON'BLE MR.JUSTICE S. D. ANAND

PRESENT: Mr.Vijay Sharma, Advocate for the petitioner.

Mr.Ashok Aggarwal, Additional A.G.Punjab for respondents 1 to 4.

Ms.Gaganjit Kaur, Advocate for respondent 5.

S. D. ANAND, J.

1. Through the present writ petition, the petitioner calls into the question the validity of order dated 21.10.2004 vide which respondent No.2 (Director, Social Security and Women and Children Development Department, Punjab) declined her plea for transfer/adjustment as Anganwari Worker at Retgarh, District Sangrur.

2. The facts indicated hereunder are presently beyond the pale of controversy. The petitioner was appointed as Anganwari Worker and joined that post on 2.7.1990. She got married on 28.2.1993. Her husband belongs

to village Retgarh. One Kamaljit Kaur was posted as Anganwari Worker at Retgarh. The post at Retgarh fell vacant on 25.6.1999 as she got married and moved elsewhere. Prior thereto, the petitioner had filed applications on 22.4.1999 and 24.5.1999 for her placement/adjustment as Anganwari Worker at Retgarh. That plea of hers was declined as there was no vacancy at Retgarh at that point of time. Respondent No.5 married a resident of Retgarh on 20.2.1999. She applied for her placement as Anganwari Worker at Retgarh on 25.6.1999. Her plea was allowed and she was posted as Anganwari Worker at Retgarh. The petitioner filed a Civil Suit challenging the declining of her request (for placement at Retgarh) and the posting of respondent No.5 at that place. That suit was decreed by the Court of Additional Civil Judge (Senior Division), Sangrur. While recording a finding that the placement of respondent No.5 at Retgarh, in preference to the present petitioner (plaintiff in that suit), was illegal and mala fide, the Court directed the competent authority to re-consider the adjustment plea raised by the petitioner as well as respondent No.5, in the light of the guidelines relatable to the transfer of Anganwari Workers and to pass a speaking order in that behalf after affording an opportunity of hearing to both the parties. It was further directed that the competent authority should specifically quote the relevant rules in the order to be passed. In compliance with that direction, respondent No.2 afforded opportunity of hearing to the petitioner and also respondent No.5 and upheld latter's placement at Retgarh. It was observed in the order that the Anganwari Workers cannot be transferred from one village to another because they are not Government employees and that there is no provision in the Government instructions governing ISDS Scheme providing for transfer of

an Anganwari Worker. Respondent No.2, in the course of impugned order, also noticed that the petitioner and also respondent No.5 were at the same pedestal as both were daughters-in-law of the village.

3. It is canvassed on behalf of the petitioner that the impugned order suffers from the vice of being non-speaking in character inasmuch as it does not at all notice the fact that the petitioner joined the job on 2.7.1990, she got married to a resident of Retgarh (and became a daughter-in-law of the village) on 28.2.1993, her claim was recommended by the Panchayat and her plea vide applications dated 22.4.1999 and 24.5.1999 was declined (only) for want of vacancy. As against it, the learned counsel pointed out, respondent No.5 got married to a resident of Retgarh (and became a daughter-in-law of the village) only on 20.2.1999. After drawing a parallel between the facts and circumstances quoted aforesaid, the learned counsel attributed mala fides by an averment that respondent No.5 is being preferred just because her father-in-law is a sitting Member Panchayat of village Retgarh.

4. The learned Additional Advocate General, Punjab (appearing on behalf of respondents 1 to 4) and Ms. Gaganjit Kaur, learned counsel appearing on behalf of respondent No.5, resisted the plea aforesaid by arguing that the transfer of an Anganwari Worker is not envisioned in the relevant Scheme itself and, thus, it is not possible to transfer respondent No.5 from village Retgarh and put the petitioner in her place.

5. It is common ground that the relevant rules provide that preference in the matter of placement shall be given to a daughter-in-law of the village.

6. The plea on behalf of the petitioner deserves acceptance. She is

senior in service to respondent No.5. She married a resident of village Retgarh on 28.2.1993; whereas respondent No.5 married a resident of that very village on 20.2.1999. The petitioner's plea for placement at Retgarh was declined exclusively for want of vacancy which concededly arose on 25.6.1999 on the moving away of the then incumbent namely Kamaljit Kaur. It is also common ground that the transfer plea raised by the petitioner was recommended by the Panchayat of village Retgarh.

7. The plea that the transfer of an Anganwari Worker is not envisioned, is illogical on the face of it for the very simple reason that respondent No.5 has also been transferred to Retgarh. Though both of them (i.e petitioner and respondent No.5) are daughters-in-law of that village and the relevant rules indicate preference in the matter of posting to females of that category, it cannot be denied that the petitioner deserves preference for very obvious reasons. Apart from her having put in longer number of service as an Anganwari Worker, she became a daughter-in-law of Retgarh about six years prior to the acquisition of that marital status by respondent No.5. Further, it was the petitioner who applied for her adjustment at Retgarh prior in point of time. She cannot be made to suffer just because her plea had earlier been declined for want of vacancy. The post at Retgarh fell vacant on 25.6.1999. The mere fact that respondent No.5 filed an application for adjustment on 25.6.1999 would not dilute the prior and preferential claim of the petitioner. Respondent No.2 did not notice all these facts in the impugned order dated 21.10.2004 (Annexure P7).

8. For the facts noticed above, we allow the writ petition. The impugned order dated 21.10.2004 shall stand invalidated being arbitrary in character. Respondent No.2 shall proceed to issue appropriate

consequential orders in the matter. The needful shall be done forthwith.

9. There would no order as to costs of the cause.

(S. D. ANAND)
JUDGE

(J. S. KHEHAR)
JUDGE

August 29, 2006
SRM